

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
MADISON CITY DEVELOPMENT) Bankruptcy Case No. 95-32556
COMPANY, INC.,)
)
Debtor.)

OPINION

This matter is before the Court for confirmation of Debtor's Chapter 11 Plan of Reorganization, Objection, and Amended Objection thereto. The Court, having heard arguments of counsel, having reviewed the written memoranda of the parties, and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The Objection and Amended Objection to confirmation basically raise two issues: (1) that the proponent of the Plan fails to comply with the applicable provisions of 11 U.S.C. § 1129(a)(2), in that the Plan fails to propose treatment for the claim of Robert E. Little, which is recognized as a disputed claim in the Debtor's bankruptcy schedules; and, (2) that the Plan fails to meet the requirements of 11 U.S.C. § 1129(a)(3), and has not been proposed in good faith. As for the objection that the claim of Robert E. Little is not treated in the Debtor's Plan of Reorganization, the Court notes that that objection is valid in that the Plan of Reorganization does not mention or propose any treatment for the claim of Robert E. Little. The Court notes that this is a technical objection and one that could be cured by an amendment to the Debtor's Plan. However, the Court in examining the objection under 11 U.S.C. § 1129(a)(3), must find that the Plan of Reorganization was not filed in good faith, resulting in the denial of confirmation of the instant Plan and a dismissal of this bankruptcy proceeding.

"Central to the aims and objectives of bankruptcy philosophy," is whether the Debtor has an on-going business which it intends to reorganize. See: In re Castleton Associates Limited Partnership, 109

B.R. 347 (Bankr. S.D. Ind. 1989); and In re Winshall Settlers Trust, 758 F.2d 1136 (6th Cir. 1985). In cases such as the instant case where a debtor has but one significant asset, the Courts have established objective guidelines and have considered the totality of the circumstances in defining whether such a Chapter 11 petition has been filed in good faith. In re Schlagen, 91 B.R. 834 (Bankr. N.D. Ill. 1988); and In re Grieshop, 63 B.R. 657 (N.D. Ind. 1986). See also: In re Midway Investments Limited, 187 B.R. 382 (Bankr. S.D. Fla. 1995).

In the instant case, the Court finds numerous factors which lead it to conclude that the Debtor's Plan of Reorganization was not filed in good faith and that the instant bankruptcy case should be dismissed. First, the Court notes that the Debtor herein has few, and possibly only one, creditor. It appears that the major reason for the filing of this Chapter 11 is an ongoing dispute between insiders of the Debtor corporation with much of said dispute having already been resolved in State Court proceedings in Madison County, Illinois. At the time of commencement of this Chapter 11 case, the Debtor maintained no business operations. Additionally, the Debtor had no employees, and the Debtor owned, as its only asset, certain rights to receive payment under two installment land contracts. At the time of commencement of this Chapter 11 proceeding, there was no apparent pressure from creditors other than the pending civil litigation between the insiders in Madison County, Illinois.

Under the facts that have been presented to this Court, the Court must conclude that there is nothing about Debtor's business which can be reorganized under the Bankruptcy Code in that the Debtor has no on-going business operations, it has no employees, and its only assets have previously been liquidated. The only apparent reason for this matter to be before this Court is to resolve the on-going litigation between the insiders to this corporation and their claim to the remaining assets of the corporation which are woefully inadequate when compared to the claims being made against them. Much of the on-going dispute between the parties has already been resolved in the State Court in Madison County, and this Court sees no reason why the remaining disputes cannot be resolved in the State Court. This Court is unable to find any compelling evidence which suggests that the interests of Debtor's creditors would best be served by this matter remaining in bankruptcy. Whereas in this case there is no going concern to

preserve, no employees to protect, no hope of rehabilitation, or any further liquidation of Debtor's assets, resort to the protection of the Bankruptcy Code is not proper. See: In re Castleton Associates, supra, at 350; In re Little Creek Development Company, 779 F.2d 1068 (5th Cir. 1986); and In re Madison Hotel Associates, 749 F.2d 410 (7th Cir. 1984).

There is a split of authority in cases such as these whether the case should be dismissed or whether the Debtor should be allowed to proceed to confirmation to present additional evidence of its ability to reorganize. The Court recognizes this split of authority and based upon the facts of the present case given the totality of the circumstances, the Court finds that dismissal is proper at this point in time. As such, the Objection and Amended Objection to Confirmation of Debtor's Chapter 11 Plan of Reorganization are ALLOWED, confirmation of Debtor's Chapter 11 Plan of Reorganization is DENIED, and an Order shall be entered dismissing the instant Chapter 11 proceeding.

ENTERED: December 13, 1996.

/s/ GERALD D. FINES
United States Bankruptcy Judge